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10/767,337	01/30/2004	Dana Aylor	066934-0001	8260
25369 7590 02/29/2008 DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005				
EXAMINER				
LAZORCIC, JASON L				
ART UNIT		PAPER NUMBER		
1791				
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02/29/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/767,337

Applicant(s)

AYLOR, DANA

Examiner

JASON L. LAZORCIK

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6 and 12-15 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The pending claim 12 requires in part that the "decorative blown glass is a beverage glass". The instant claim relates to an intended use for the product produced from the claimed process and as such said limitation fails to further limit the parent method claim.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 12 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 12 recites the term "extremely colored glass" however the Examiner has been unable to trace the origin of the instant term to the disclosure as originally filed. Further, one of ordinary skill in the art would not necessarily have been apprised of such

a limitation in view of the originally filed specification. Applicant is therefore required to amend or cancel the instant claim.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 and 12-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6, lines 10 through 13 include apparent grammatical errors which render the precise metes and bounds of the claim unclear and indefinite. Specifically, the claim reads in part "heating the decorative glass body ... so that during attachment of millefiori glass to the hot glass bottle made of basic transparent glass, a viscosity of a contact surface, between millefiori glass and basic transparent glass, is in the range of...". In view of the claim punctuation, it is not clear to the examiner precisely what nexus exists between the heating step and viscosity limitation. It follows that the precise metes and bounds of the instant claim are rendered unclear and indefinite. Appropriate correction is required.

The term "extremely colored" in claim 14 is a relative term which renders the claim indefinite. The term "extremely colored" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one

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of ordinary skill in the art would not be reasonably apprised of the scope of the invention. In view of the indefinite nature of the instant terminology, the particular metes and bounds for which Applicant seeks patent protection are likewise rendered unclear and indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman (An Illustrated Dictionary of Glass, Thames & Hudson; New Ed edition (May 1987), pp160).

Newman teaches a method of producing decorative blown glass or "beverage glass" [**Claim 12**] commonly known as "intersia glass" developed during the 1920's to 1930's. The technique is distinguished by having a layer of "extremely" coloured glass

[**Claim 14**] cased between two layers of clear glass wherein the total thickness of said decorative glass is typically less than 3mm. The reference teaches that arranging fragments of coloured glass which are held functionally equivalent to the claimed millefiori glass. These colored glass fragments are adhered to the exterior of a parison of clear molten glass. The chips are coated in another layer of clear glass, the laminate heated and blown to reduce the thickness of the vessel and to lighten the color.

Now while the instant reference details a glass article making technique developed by Frederick Carder in 1930's, said reference is silent regarding the particular limitation wherein "the basic glass is crystal" as required by applicants newly submitted claim 13. On this matter, it is the Examiners position that the use of a crystal glass as the transparent glass is either inherently encompassed by the instant teachings or alternately that the use of crystal glass would have represented a merely trivial extension over the Newman reference.

The Examiners position for inherency is evidenced by the particular examples of Carder's Intarsia glass set forth in the Gardner reference below. Specifically, each of the examples set forth in the Gardner reference (see illustration captions for Ill. 112, 113, 114, 115, and 116) provide evidence that Carder routinely utilized crystal glass as a material for fabricating the Intarsia pieces [**Claim 13**]. The case for inherency notwithstanding, it is evident that crystal glass is known in the manufacture of Intarsia glasses and one of ordinary skill in the arts at the time of the invention would have

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found the use of such glass to be a merely trivial extension over the prior art teachings, absent any compelling evidence to the contrary.

Next, although the reference does not explicitly limit the surface viscosity of the bottle or parison of "basic transparent glass" to fall within a range of about 10^4 to 10^9 Pas, it is the Examiners position that such a viscosity range is either implicitly disclosed in the reference or alternately would have been readily obvious to one having an ordinary level of skill in the art at the time of the invention.

Specifically, one of ordinary skill in the art would recognize Applicants claimed viscosity range as a merely "normal" or typical viscosity for deforming a heated glass into final form. This viscosity range is typically referred to as the "working range for glass (see below technical definition);

"Working Range: The range of surface temperature in which glass is formed into ware in a specific process. The "upper end" refers to the temperature at which the glass is ready for working generally corresponding to a viscosity of 10^3 to 10^4 poises. The "lower end" refers to the temperature at which it is sufficiently viscous to hold its formed shape, generally corresponding to a viscosity greater than 10^6 poises. For comparative purposes and when no specific process is considered, the working range of glass is assumed to correspond to a viscosity range from 10^4 to $10^{7.6}$ poises." (http://www.corning.com/Lifesciences/technical_information/techDocs/glassterminology.asp)

As set forth above, the working range for glass is broadly considered as a viscosity greater than 10^6 poises. Further, it would be well appreciated by skilled artisans in the glass making arts that the ability of a glass object to retain a

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formed shape is directly dependent upon the glass viscosity. It follows that it would have been obvious for one of ordinary skill in the art at the time of the invention to try working the glass in a viscosity range of greater than 10^6 poise and namely in the range of approximately 10^9 poises. In view of the foregoing, the claimed viscosity range of 10^9 poises would have been arrived at through no more than routine experimentation and optimization of the prior art process [Claim 15].

In addition, although the instant reference is silent regarding the degree of "enlargement" experienced by the vessel during the blowing process, it is the Examiners position that the claimed step of enlarging the piece "at least five to thirty times" is either implicitly encompassed in the disclosed process, or alternatively that it would have been readily evident to one having an ordinary level of skill in the art. Specifically with respect to the latter point and absent any compelling and unexpected results to the contrary, it would have been obvious for one having an ordinary level of skill in the art at the time of the invention to expand the glass to any reasonable degree as requisite to fulfill an aesthetic design consideration and or an end user application.

On this matter, Applicant will appreciate that the shaping of glass forms originated in approximately the first century BC, and that the fundamental technique has remained essentially unchanged to present day. The following images depict a representative parison (below left) reshaping and enlarging

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operation into a final form (below right) (<http://www.neder.com/glassact>). It would appear evident in the images that the original parison has been enlarged at least 5 to thirty times as required by the instant claim. Further, the prior art references in no manner expressly the degree of expansion imparted to an initial parison. It is therefore the Examiners position that Applicants claimed enlargement ratio of "at least five to thirty times" is insufficient to patentably distinguish the claimed invention over the prior art teachings. Specifically, it would have been obvious for one of ordinary skill in the art to try any reasonable enlargement ratio as dictated by design considerations.



Claims 6, and 12-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gardner ("The Glass of Frederick Carder", Crown Publishers, New York, 73-75, & 77-79).

As in the previous reference to Newman, Gardner teaches a style of glass manufacture practiced by an artist named Frederick Carder in the late 1920's to early

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1930's and commonly referred to as Intarsia. This reference teaches that fragments of colored glass are arranged on a marver, adhered to a heated parison of clear, colorless crystal glass, and worked by traditional blowing techniques into final form. A discussion of Millefiori glass in the same reference teaches that ancient artistic glassware "were made from pieces of colored glass and millefiori cane segments fused together by mosaic techniques in much the same manner as Carder used" (pg 78)

The reference continues by indicating that the pieces typically ranged from 1/16 to 1/8 inch thick in "three layers of glass: two colorless crystal glass layers encasing a layer of colored glass which forms the ornamental design" (page 74). An excerpt illustration (illustration 115, pg 74) from the instant reference is presented below along with Applicants Figure 1 to underscore structural and design similarities between the product produced by Applicants process and that of prior art. The figure further illustrates that the "proportionality" of the colored glass design is roughly maintained through the glass blowing and working process as claimed.

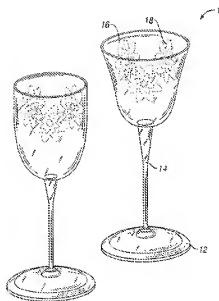


FIG. 1

The Gardner reference continues by teaching that "an elongated parison of crystal glass varying with size of the piece desired, but averaging about 3 inches long by 1½ inches in diameter" was used to produce a 6- to 8- inch glass vessel. This disclosure therefore teaches that the vessel is expanded at least two times and the claimed expansion ratio of "at least five to thirty times" would represent a merely trivial extension of the instant teachings in accordance with the above presented rationale.

Again, the Gardner reference does not explicitly limit the surface viscosity of the parison or the decorative glass chips to fall within a range of about 10^4 to 10^9 Pa-s. Under the same rationale presented above, it is the Examiners express position that the claimed viscosity range is either implicitly disclosed in the reference or alternately would have been readily obvious to one having an ordinary level of skill in the art at the time of the invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON L. LAZORCIK whose telephone number is (571)272-2217. The examiner can normally be reached on Monday through Friday 8:30 am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven P. Griffin/
Supervisory Patent Examiner, Art
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JLL